



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201240032

JUL 11 2012

Uniform Issue List: 402.00-00

T:EP:RA:T3

Legend:

Taxpayer A:

Taxpayer B:

Company P:

Plan X:

Account Y:

IRA Z:

Financial Institution E:

Investment Manager F:

Amount M:

Dear

This is in response to your request dated July 11, 2011, and December 30, 2011, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayers A and B are married and file a joint Federal income tax return. Taxpayer A, age 48, asserts that he received a distribution of Amount M from Plan X which he attempted to rollover to an individual retirement account ("IRA"). Taxpayer A further asserts that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to errors on the part of Financial Institution E.

Taxpayer A was employed at Company P but took a new job elsewhere during 2008. Taxpayer A had made substantial contributions over the years to Company P's profit sharing plan, Plan X, which was managed by Investment Manager F. Taxpayers A and B have separate brokerage accounts at Financial Institution E. Taxpayer A's intention was to simplify their financial affairs by consolidating their various personal investments, including IRA accounts, at one brokerage firm, Financial Institution E.

During April 2009, Taxpayer A opened what he believed to be an IRA rollover securities account at Financial Institution E by following the simple online instructions to establish such a rollover IRA.

When Taxpayer A established Account Y he had a telephone conversation with a Financial Institution E retirement specialist and specifically asked how to set up an IRA rollover account and exactly how to transfer funds from Investment Manager F investments into the newly created Financial Institution E IRA rollover account. Taxpayer A followed the advice he was given by Financial Institution E, logged onto the Financial Institution E retirement account internet homepage and created what he believed to be an IRA rollover account. Taxpayer A followed the verbal instructions provided by the Financial Institution E retirement specialist and Taxpayer A opened Account Y directly from the Financial Institution E retirement internet homepage which was designed specifically to create IRAs, IRA rollovers and other retirement-type accounts.

At the end of the online process a new account, bearing Taxpayer A's name and titled as an "IRA" account, was created and a new account number was assigned. Taxpayer A believed he had properly created an IRA rollover account at Financial Institution E and nothing Taxpayer A received from Financial Institution E caused Taxpayer A to believe otherwise. Thereafter, Taxpayer A requested that Investment Manager F rollover Amount M to Account Y.

Taxpayer A initiated the distribution from Plan X by way of a telephone call he had with the Investment Manager F representative handling Plan X investments. In that telephone conversation, Taxpayer A inquired as to how he could transfer a portion of his account held by Investment Manager F in Plan X to what he believed was his new IRA rollover account at Financial Institution E. At the time, Taxpayer A specifically requested that Investment Manager F transfer Amount M in Plan X directly to Account Y following the instructions he was provided by Financial Institution E. However, Investment Manager F refused and informed

Taxpayer A that they could not transfer the funds held in the profit sharing plan directly to Financial Institution E due to Investment Manager F's own internal policies regarding the disposition of those funds. Instead, Investment Manager F issued a check for Amount M directly to Taxpayer A and Taxpayer A forwarded that check to Financial Institution E with the specific written instructions that the funds were retirement funds and should be deposited into Taxpayer A's IRA.

The Amount M check was deposited into Account Y on April 30, 2009. Investment Manager F issued a 2009 Form 1099 R to Taxpayer A, which reflected the April 23, 2009 distribution as an IRA rollover and which identified the taxable amount of the distribution in Box 2a as zero. At all times Taxpayer A treated the funds in Account Y, as if they were IRA rollover funds.

In December 2010, Taxpayer A attempted to rollover the remaining balance of his Plan X account to Account Y, at which time a Financial Institution E representative contacted Taxpayer A to inform him that the remaining balance of his Plan X account received from Investment Manager F could not be accepted by Financial Institution E because Taxpayer A did not maintain any IRA account at Financial Institution E into which the rollover could be deposited. Taxpayer A responded to the Financial Institution E representative's inquiry by directing him to Taxpayer A's Account Y, at which time the Financial Institution E representative informed Taxpayer A that Account Y was not being maintained at Financial Institution E as a IRA rollover account, but rather, was a regular securities account.

To complete the December 2010 rollover from Plan X, Taxpayer A authorized Financial Institution E to create IRA Z, an IRA rollover account to accept the Plan X rollover funds which Financial Institution E received from Investment Manager F in December 2010.

Taxpayer A also immediately undertook the following steps with respect to the April 30, 2009 attempted rollover transaction, the proceeds of which had been deposited into Account Y:

1. Taxpayer A immediately informed the Financial Institution E representative who was resolving the December 2010, rollover issues about the error with respect to the attempted rollover and Taxpayer A's belief that the original attempted rollover had been properly deposited into an IRA rollover account, bearing Account Y, Taxpayer A's name and the letters "IRA". Taxpayer A directed Financial Institution E to immediately file a request with the Financial Institution E processing and compliance unit seeking to have the erroneous classification of Account Y as a non-IRA account corrected.

2. Taxpayer A informed Financial Institution E that there is a serious error or mistake on the retirement page of the Financial Institution E website since any individual consumer, such as Taxpayer A, seeking to create a rollover

IRA from the Financial Institution E retirement internet home page should not be able to open up any type of account other than an IRA or other qualified plan account. Financial Institution E acknowledged the potential confusion in using the webpage to open an IRA account and stated it had referred the problem to the Financial Institution E product development group for review and correction.

3. On December 23, 2010, Taxpayer A received a communication from Financial Institution E with respect to the 2010 rollover IRA deposit which confirmed that IRA Z had been created and that the funds rolled over from Investment Manager F had been received and properly deposited by Financial Institution E into IRA Z. However, Taxpayer A was still waiting for Financial Institution E to correct the April 30, 2009 rollover erroneously deposited into Account Y.

4. On December 31, 2010, Financial Institution E requested that Taxpayer A forward a letter to Financial Institution E identifying the fact that Taxpayer A: (a) mistakenly opened a brokerage account under the belief that it was an IRA rollover account; (b) would like Amount M of the April 30, 2009 rollover funds originally deposited into the erroneous IRA rollover account, Account Y, moved into Taxpayer A's subsequently created IRA rollover account, IRA Z; (c) would like the Amount M rollover deposit to be made effective as of April 30, 2009; (d) would like a 2009 Form 5498 to reflect that Financial Institution E properly rolled over the Plan X proceeds into an IRA rollover account; and (e) was willing to transfer funds from the erroneous IRA rollover account, Account Y, to IRA Z.

5. Throughout the entire course of Taxpayer A's communications with Financial Institution E with respect to the erroneous IRA account, Taxpayer A was led by Financial Institution E to believe that the error could be corrected. Nonetheless, in a telephone conversation on February 9, 2011, Taxpayer A was informed by a Financial Institution E representative that Financial Institution E was not willing to correct any matters relating to the April 30, 2009 rollover insofar as their internal record keeping and tax reporting controls and procedures reportedly would not allow them to do so.

No income tax was withheld by Investment Manager F from the distribution. Taxpayer A had no reason to believe an error or oversight had occurred and Taxpayer A relied on the fact that the Plan X distribution was properly rolled over into a new and properly formed IRA rollover account.

Taxpayer A has submitted a copy of an e-mail to Financial Institution E dated December 23, 2010, from Taxpayer A which alerts Financial Institution E that the website allows an individual who is on the retirement page and selects a "rollover IRA" to create an account that is not an IRA.

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Taxpayer A has submitted a copy of an e-mail from Financial Institution E dated December 23, 2010, in response, which informs Taxpayer A that a Financial Institution E Service Specialist has made a recommendation to change the application process to avoid confusion on the website.

Taxpayer A has not used Amount M for any other purposes.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 402(c)(3)(A) of the Code with respect to the distribution of Amount M.

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trust to eligible retirement plans, including IRAs.

Section 402(c)(1) of the Code provides that if any portion of an eligible rollover distribution from a qualified trust is paid to the employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An IRA constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1 of the Income Tax Regulations, Q&A-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the

use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 402(c)(3)(B) of the Code was due to errors on the part of Financial Institution E.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount M into a rollover IRA or another qualified plan. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contributed amount will be considered a rollover contribution under section 402(c)(3) of the Code.

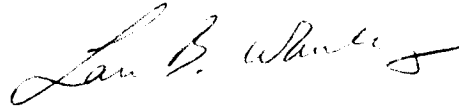
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Laura B. Warshawsky".

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: